

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	WC Docket No. 19-126
Rural Digital Opportunity Fund)	
)	WC Docket No. 10-90
Connect America Fund		

REPLY COMMENTS OF COBANK, ACB

CoBank, ACB (“CoBank”) hereby submits these reply comments to the Notice of Proposed Rule Making to establish the Rural Digital Opportunity Fund (RDOF). The Federal Communications Commission (the Commission) proposes to build on the success of the Connect America Fund (CAF) Phase II auction by establishing the RDOF, which will commit at least \$20.4 billion over the next decade to support high-speed broadband networks in rural America. As a lender to agriculture and rural communities, CoBank welcomes this vital support to deploy and operate broadband serving high-cost rural communities.

As CoBank has commented in the past, the key challenge of deploying affordable broadband throughout the United States is the high cost of building and maintaining the necessary infrastructure in rural areas. If companies could make a return on investment building out broadband to all Americans, they would have already done so. There would be no rural-urban

digital divide. The public policy of providing a cost-recovery or an incentive-based mechanism to connect all Americans is not a new concept and its results serve the greater good. In addition to the high costs associated with constructing broadband infrastructure in rural areas, there are also high costs associated with maintaining and upgrading these networks to accommodate growth of data traffic. The broadband network is a dynamic infrastructure; frequent technological advances warrant continuous upgrades and regular capital investment. The use of the reverse auction is an incentive-based mechanism to encourage competition for a limited amount of resources from the Universal Service Fund to serve in high cost rural areas. The Commission rolled out the use of reverse auctions in 2014 to serve high cost rural areas and has built on the lessons learned to date.

Comments on Letters of Credit (LOC)

CoBank has issued Letters of Credit (LOC) to awardees of reverse auctions for Mobility Fund Auction, the Rural Broadband Experiment Program and the CAF II. At times, the structure of a LOC has been misunderstood by auction winners. A LOC is a debt instrument that any issuing financial institution underwrites according to each lender's debt underwriting guidelines. As such, awardees must have enough debt capacity to support the initial and ongoing LOC amounts. An awardee's debt capacity is mainly determined by existing operations and cash flows. A broadband provider that plans on participating in the reverse auction should align their bid amount(s) to their debt capacity to ensure there is enough debt capacity to support the LOCs. This will better ensure the Commission's goals of distributing funds to qualified awardees and

protecting the use of public funds if an awardee does not fulfill its obligations under the program. This public-private partnership leverages the resources of the financial sector to underwrite the appropriate use of the auction proceeds.

The financial sector has the resources and knowledge base to underwrite the ability of the awardees to achieve the goals of the reverse auction. The LOC fees charged vary depending on the risk profile of an awardee as determined by the financial institution issuing the LOC. Generally, the LOC fees align with the interest charged for similarly structured debt.

CoBank agrees with the comments made by the Surety & Fidelity Association of America (SFAA) that some small rural communication companies lack sufficient financial capacity and collateral to obtain LOCs. In some instances, a company may find the process and costs of obtaining a LOC to be prohibitive. In those instances, CoBank agrees with the SFAA that during the construction phase there are possible benefits of surety bonds. The bond issuer would conduct the underwriting of the project, by assuring that the RDOF recipient is qualified to perform the construction obligations of the award. As noted by the SFAA, the surety bond is an option to meet the build out of the project, but not to meet or maintain certain performance criteria. Once the milestone of construction is complete, then a LOC could be required for each of the subsequent year's level of support. As stated in question 25, *Reporting Requirements*, RDOF support recipients would be required to certify each year after they have met their final service milestone: they operated in the prior year meets the Commission's performance

requirements. If the support recipient failed to meet the performance requirements, then the LOC would provide the Commission a mechanism to recoup the funding.

Another suggestion to free up additional capital for RDOF recipients and monitor the use of the RDOF support to ensure the use for its intended purposes is based on the proposals outlined in question 25. If the support recipient agrees to the conditions set forth in question 25 (listed below), then the support recipient should only be required to provide a LOC for one year's annual support. Requiring a LOC in the amount of just one year's support would reduce the future liability of an awardee given the required LOC would not cumulatively increase during the early years of the buildout as required under the current proposed rule. As mentioned above, financial institutions underwrite LOCs based on a company's current borrowing capacity. The current requirement that the LOC increase with each year's subsequent support may be taken into account when a financial institution is determining if it can issue the LOC and maintain it over the project period. Limiting the LOC requirement to only one year's support may provide more opportunity for smaller and more diverse participants, given potential LOC issuing financial institutions can evaluate those companies based upon a smaller fixed LOC amount which these companies could potentially find easier to obtain. The risk of limiting the LOC requirement for one year could be mitigated by instituting more stringent annual reporting requirements which should include but may not be limited to the following:

- Require the support recipient to file location and technology data on an annual basis in the online HUBB portal and to make certifications of milestones and file such data on a rolling basis.

- Require the support recipient to file the same information in their annual FCC form 481 reports, that is required of the CAF Phase II auction support recipients, including information regarding the community anchor institutions they serve, the support they used for capital expenditures, and certifications regarding meeting the Commission's performance obligations and available funds
- The support recipients would also be subject to the same annual section 54.314 certifications, the same record retention and audit requirements, and the same support reduction for untimely filings as other high-cost ETCs.
- The support recipients would be required to certify each year that the network build out operated in the prior year meets the Commission's performance requirements.
- The support recipients would be required to identify the number, names and addresses of community anchor institutions to which they newly began service in the preceding calendar year as well as identify the total amount of support they used for capital expenditures in the previous calendar year.
- Moreover, support recipients would need to certify that they have the available funds for all project costs that will exceed the amount of support they will receive in the next calendar year.

If the support recipients report on their annual progress to meet the build out on time to meet their obligations, then the support recipient's annual LOC requirement should only be in the amount of one year's worth of support. Under this method, the Commission will have an annual record of the support recipients build out progress. In return for providing detailed information

about their system's progress in meeting the obligations, the LOC requirement will be reduced and provide the recipient more capital to operate.

Thank you for the opportunity to share our perspective. We share the Commission's goal of ensuring that high-speed broadband is made available to all Americans quickly, and at an affordable cost.

Respectfully submitted,

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